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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 03, 2021

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEAN F. McAVOY, CLERK

ALLAH©, SP/C, 5% NATION OF
ISLAM,

No. 4:21-cv-05130-SMJ

Plaintiff,

v.

**ORDER DENYING LEAVE TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE**

BRUCE A. SPANNER, TEDDY
CHOW, MELISA FARIS, RUBY A.
OCHOA, PEYMAN YOUNESI,
DONALD R. HOLBROOK GENIE
RANDOLPH, MELANIE PERKINS,
THOMAS O. RICE, STANLEY A.
BASTIAN, MARSHA J. PECHMAN,
CHERYL STRANGE, and ALL JOHN
AND JANE DOES NOT YET
MENTIONED,

Defendants.

By Order filed October 29, 2021, the Court directed Plaintiff Allah©, prisoner number 950376 confined at the Washington State Penitentiary, to show cause why the Court should grant his application to proceed *in forma pauperis*. ECF No. 19 at 4. In the alternative, Plaintiff could have paid the \$402.00 filing fee. *Id.*

On November 8, 2021, Plaintiff filed a 40-page Response, including a 31-page “Amended Petition for Writ of Habeas Corpus.” ECF No. 20. On November

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING ACTION – 1

1 29, 2021, he filed a 31-page “Supplemental Affidavit of Truth and Add Names of
2 John and Jane Does to Complaint and Showing Cause for Immediate Release
3 Documents From King Co. Prove Racially Motivated Hate Crime.” ECF No. 22.
4 After careful review of Plaintiff’s submissions, the Court finds that Plaintiff has
5 failed to demonstrate that he was under imminent danger of serious physical injury
6 when he initiated this case and is thus precluded under 28 U.S.C. § 1915(g) from
7 proceeding in this action without prepayment of the filing fee. *See O’Neal v. Price*,
8 531 F.3d 1146, 1153 (9th Cir. 2008).

9 Plaintiff does not refute the Court’s finding that he filed three or more actions
10 that were dismissed as frivolous, malicious or for failure to state a claim upon which
11 relief may be granted. *See* ECF No. 19 at 2–3. Rather, he claims that “28 U.S.C. §
12 1915(g), is Barred by the ‘Fruit of the Poisonous Tree’ Doctrine,” asserting that he
13 as been “pursuing discovery diligently, not knowing that the documents that Allah©
14 was seeking to discover were being intentionally hidden and Falsely labeled.” *Id.* at
15 1 (as written in original). Plaintiff argues there is “no Warrant of Commitment on
16 File” justifying his continued confinement. *Id.*

17 Plaintiff also asserts that he is in imminent danger of two hernias “caused by
18 DOC/WSP, and the U.S. Marshals, when they illegally transported Allah© to the
19 Federal Jail in Sea Tac, to do an evaluation (which didn’t work out to well), the
20 Federal Jail guards ruffed Allah© up while Allah© was in handcuff’s to Force

1 Allah's© Fingerprints and picture on the name Edwin R. Coston, in U.S.D.C. East.
 2 Dist. Spokane, Case No. 13-cr-112-ALH/TOR." ECF No. 20 at 2 (as written in
 3 original). Plaintiff attaches a "Refusal of Medical, Dental, Mental Health, and/or
 4 Surgical Treatment" form that he signed on January 14, 2020, noting he had refused
 5 hernia repair and was cautioned this refusal may result in "enlargement of the
 6 hernia, incarcerated hernia, strangulated hernia and death." *Id.* at 8. The Court finds
 7 Plaintiff's refusal of medical treatment in 2020, without more, insufficient to avoid
 8 the preclusive effects of 28 U.S.C. § 1915(g).

9 Having reviewed Plaintiff's submissions, the Court finds that he has failed to
 10 demonstrate that the Court erred in finding that he is no longer eligible to proceed
 11 *in forma pauperis* under 28 U.S.C. § 1915(g), or that he was under imminent danger
 12 of serious physical injury when he filed his complaint. *See Andrews v. Cervantes*,
 13 493 F.3d 1047, 1055–56 (9th Cir. 2007). Therefore, Plaintiff has lost the privilege
 14 of filing this lawsuit *in forma pauperis*.

15 Although granted the opportunity to do so, Plaintiff did not pay the \$402.00
 16 filing fee to commence this action filed on September 24, 2021, ECF No. 1. As a
 17 result, this Court dismisses this case without prejudice for failure to comply with
 18 the filing fee requirements of 28 U.S.C. § 1914.

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1 Accordingly, **IT IS HEREBY ORDERED:**

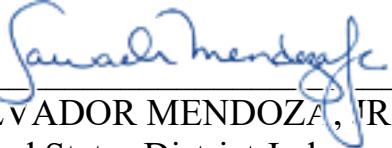
2 1. This case is **DISMISSED WITHOUT PREJUDICE** for failure to
3 comply with the filing fee requirements of 28 U.S.C. § 1914.

4 2. All pending motions are **DENIED AS MOOT**.

5 3. The Court certifies any appeal of this dismissal would not be taken in
6 good faith.

7 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,
8 enter judgment, provide copies to *pro se* Plaintiff at his last known address, and
9 **CLOSE** the file.

10 **DATED** this 3rd day of December 2021.

11 
12 SALVADOR MENDOZA, JR.
United States District Judge